

## REMARKS

### 1. Status of the Claims

Currently, Claims 1, 24, 27 and 28 are pending in the application. Claims 1 and 28 have been amended above.

### 2. Rejection under 35 U.S.C. §102

The Examiner has rejected Claim 28 under 35 U.S.C. §102(b), based on the contention that it is anticipated by U.S. Patent No. 3,482,929, issued to Gentil (Gentil '929). Applicant respectfully traverses the Examiner's rejection. Notwithstanding that rejection, Applicant has amended Claim 28 so as to better clarify the invention. Specifically, Claim 28 has been amended to clarify that the controllably releasing means includes, *inter alia*, a gas generating cell associated with the interior of the housing. Gentil '929 fails to show any such element, and therefore cannot anticipate the presently claimed invention in Claim 28. Additionally, and as will be explained below in more detail, the disclosure of Gentil '929 teaches away from such an addition, as the device would not function correctly with a forced-delivery device (such as a gas-generating cell).

Applicant notes that the Examiner has asked for the controllably releasing means to be defined. The specification notes several different possible structures for this element, including having the housing be porous to ambient air, having a porous plug over the opening, having a dual-layer porous plug with a space between the layers, and the gas generating cell now claimed in Claim 28. Any one of these elements can be combined with the gas generating cell now specifically claimed in Claim 28 to generate the desired delivery rate from the device. Thus, in Claim 28, controllably releasing means comprises any number of combinations of the above elements, but specifically includes a gas generating cell at least.

As amended above, Claim 28 is not taught, disclosed or suggested by Gentil '929, and therefore should now be in condition for allowance.

3. Rejection under 35 U.S.C. §103(a)

The Examiner has additionally rejected Claims 1, 24 and 27 under 35 U.S.C. 103(a), based on the contention that they are unpatentable over Gentil '929 in view of U.S. Patent No. 4,294,778, issued to DeLuca (DeLuca '778). Applicant again respectfully traverses the Examiner's rejection. The Examiner has thusfar disagreed with Applicant's view of DeLuca '778 and Gentil '929. Without conceding to the Examiner's contentions, and notwithstanding Applicant's continued traversal, Applicant has amended Claim 1 to specify that the controllably releasing means includes, *inter alia*, a gas generating cell. Such a device is not taught, disclosed or suggested by the prior art.

Specifically, and as noted above, Gentil '929 fails to disclose the use of a gas generating cell. Similarly, DeLuca '778 also fails to include such a structure. Therefore, even the combination of the two references cannot render the present Claim 1 unpatentable.

Furthermore, given the disclosure in Gentil '929, the incorporation of a gas generating cell would not be obvious to one of ordinary skill in the art. (Since DeLuca '778 is cited for the contention that it shows a means for increasing circulation, and not the remaining elements of Claim 1, that reference will not be discussed in detail). Specifically, Gentil '929 operates to deliver a fluid to a porous member (e) through a capillary effect. As the fluid is delivered from the tube (a), and onto cylinder (g), it is evaporated, allowing additional fluid to be drawn out of tube (a) and into porous member (e). (Gentil '929, Col. 2, Lines 41-44). Since the device relies on capillary action to effect delivery, any use of a forced delivery means (such as a gas generating cell) would cause the porous member (e) to become oversaturated, and the operation

of the device in Gentil '929 would be frustrated.

Based on the above, Applicant submits that Claim 1 should now be in condition for allowance. Furthermore, the remaining claims in the application, namely Claims 24 and 27, depend from Claim 1, and should therefore similarly be in condition for allowance.

4. Conclusion

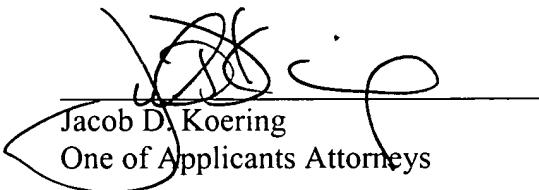
Applicant submits that All claims as amended above are now in condition for allowance. Therefore, reconsideration and passage to allowance of Claims 1, 24, 27 and 28 is respectfully requested.

Should anything further be required, a telephone call to the undersigned at (312) 226-1818 is respectfully requested.

Respectfully submitted,

FACTOR & LAKE, LTD.

Dated: March 10, 2004

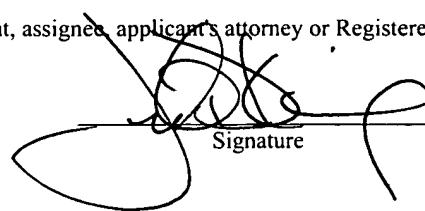
  
Jacob D. Koering  
One of Applicants Attorneys

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Patent Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 10, 2004.

Jacob D. Koering

Name of Applicant, assignee, applicant's attorney or Registered Representative

  
Signature